IN THE

Supreme Court of the United States

OCTOBER TERM, 1941.

NO._____

JOE C. STEPHENS, ET AL,
Petitioners,

vs.

ST. LOUIS UNION TRUST COMPANY,
Respondent.

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

THE OPINIONS OF THE COURTS BELOW.

The opinion of the District Court sustaining Petitioners' Motions to Dismiss Respondent's suit for want of the required jurisdictional amount ($3,000.-00 exclusive of interest and costs) will be found on pages 14-18 of the Record; the Judgment of Dismissal on page 19-20 of the Record.

The opinion of the Circuit Court of Appeals, Fifth Circuit, reversing the judgment of the District Court, and holding that the District Court did have jurisdiction to entertain this suit, will be found on pages 33-36 of the Record.

The essence of the District Court's opinion denying jurisdiction is found in the following paragraphs thereof:

> "The uniting of the actions, if it is permissible under the rule above mentioned, is a convenience and a saving of expense to all parties, because there can be determined in one suit all of the issues. The obligation, the responsibility, and the defenses, are identical as to each defendant. Of course, the sensible appeal of convenience may not override an express jurisdictional provision, but the avoidance of a multiplicity of suits also has its place in fixing jurisdiction. Such an equity, however, may not be resorted to in a National Court, if the State Court which would have jurisdiction, would not require multiplicity. The twenty-six suits sought to be avoided here, would not be necessary there. One suit can be brought. DiGiovauni v. Camden Insurance Association, 296 U. S. 64; Stockyards National Bank v. Maples, 127 Tex. 633; Campbell v. Land, 69 S. W. 554."

> "So, returning to the first question. Unless there is a union of the individual claims, which are in themselves, insufficient to give jurisdiction, there is no entry into the National Court. Such union must be by combination and conspiracy, or, agreement and conspiracy, or, fraud. DiGiovauni v. Camden Fire Insurance Association, 296 U. S. 64; Pioneer Pyramid Insurance Company v. Hughey, et al, 76 F. (2d) 524; Indemnity Insurance Co. v. School District, 63 F. (2) 878; Georgia Power Company v. Hudson, 49 F. (2) 66; Waltman v. Union Central Life Insurance Co., 25 F. (2) 320; Essman v. Hood, 45

F. (2) 881; Broderick v. American General Corporation, 71 F. (2) 864. The last case deals with the creditors' bill exception to the general rule, and no such contention is made here."

"My first impression was that there is such a tying together by the contract that the jurisdictional amount is present, but a more careful inspection of the contract does not support that view. Thorpe v. Story, 73 Pac. (2) 1194."

"The order overruling the motion to dismiss is set aside, and the cause is dismissed."

The Circuit Court of Appeals, on the other hand, in reversing the judgment of the District Court, and remanding this cause for further proceedings in accordance with law, held that the District Court had jurisdiction of this cause (R. 33-36):

1. Because in order to render judgment against each guarantor for the amount of his contractual liability ($1,500.00 principal, and $1,000.00 interest, or a total of $2,500.00), the trial court was compelled to *adjudicate the total amount of the debt* ($80,500.00 principal and interest) owed by the maker of the note, who was not a party to the suit, and "to that extent and in that sense, the amount in controversy far exceeded its minimum jurisdiction."

2. Because "Notwithstanding the limitation of maximum liability, as to all defendants, to $2,500.00 each, by the very terms of the guaranty, they bound themselves *to that extent jointly and severally* to pay all of the principal and interest of the notes so guaranteed," and plaintiff, to the maximum extent of their

liability, could recover against one or all at its option; but, in so suing, it would again have to allege, prove and have *adjudicated*, as a condition to recovery, *the amount of default by the principal debtor.*"

3. Because "There was a single contract of guaranty, which all of the defendants signed and became parties to, in which they all promised the same thing to the guarantee, and as to him, that obligation was indivisible, except as to the limitation upon his right to require payment by any one of them of not more than $2,500.00. *The subject matter of the suit was this contract; the whole amount due thereunder*, as well as the extent of liability of each defendant, had to be determined by the lower court, and, *having jurisdiction in view of the amount involved in the principal demand*, it could and should decide all the other issues."

Discussion of "Tying Together" Theory

The conclusion reached by the Circuit Court of Appeals, as above set out, that jurisdiction of the District Court is to be determined by "the amount due under the default," or "the amount of default by the principal debtor" or "the amount involved in the principal demand" (all three expressions being used in the court's opinion), is equivalent to asserting that the jurisdiction of the District Court will be determined by aggregating or tying together the several liabilities of each of the defendants, which in each case is limited to $1,500.00 principal and $1,000.00 interest.

Bearing in mind that the Guaranty Agreement sued upon expressly limits the liability of each of the signers to the payment of $1,500.00 of principal, and $1,-

000.00 of interest, and no more (see page 4 hereof); and that it is only by "tying together" the respective liabilities of the several defendants that jurisdiction of the District Court can be sustained, Petitioners feel that it is of prime importance to trace the history of this "tying together" rule, in order to define its application and limitations.

* * * * *

The first case that Petitioners have been able to find, which uses the expression of causes of action being "tied together" so as to give the United States District Court jurisdiction, is *McDaniel v. Traylor*, 196 U. S. 415, decided in 1905, opinion by Mr. Justice Harlan. In that case, after stating the general rule announced in *Walter v. Northeastern Railroad Company*, 147 U. S. 370, that—

> "It is well settled in this court that when two or more plaintiffs, having several interests, unite for the convenience of litigation in a single suit, it can only be sustained in the court of original jurisdiction, or on an appeal in this court, as to those whose claims exceed the jurisdictional amount; and that, when two or more defendants are sued by the same plaintiff in one suit, the test of jurisdiction is the joint or several character of the liability to the plaintiff,"

the court pointed out that there was an exception to such general rule, same being:

That where the essence of a suit is an alleged *fraudulent combination and conspiracy* on the part of defendants, and by reason of such *combination and conspiracy*, a certain result is achieved, then, as stated

by the court, "The defendants have so tied their respective claims together as to make them, so far as the plaintiffs and the relief sought by them are concerned, one claim;" the reason being that the defendants, by their joint action, in furtherance of the *combination* or *conspiracy*, produced a result, for the correction of which they may be all joined together or united, for the purpose of determining jurisdiction.

* * * * *

The second instance where reference is made to causes of action being "tied together" for the purpose of determining jurisdiction, is on the second appeal to the Supreme Court of the United States of the *McDaniel v. Traylor* Case, 212 U. S. 428, decided in 1909, opinion by Mr. Justice McKenna. It appears from the opinion of the Supreme Court that, following the remanding of the case to the trial court, plaintiffs failed to prove, to the satisfaction of the court, that the charged *fraudulent combination* or *conspiracy* existed, and by reason thereof, the trial court found that it was without jurisdiction. Mr. Justice McKenna, in his opinion on this second appeal, referring to the previous opinion of the Supreme Court on the first appeal of the case, said:

> "As we have already seen, it was the *fraudulent combination* and *conspiracy* which united the claims and made the aggregate of the claims the matter in dispute. By reason of that combination, we decided the claims were 'so tied' together as to make them 'so far as the plaintiffs and the relief sought by them are concerned, one claim' * * *. We further decided * * * if the plaintiffs do not

prove such a *combination* and *conspiracy*, in respect, at least, of so many of the specified claims as in the aggregate will be of the required amount, then their suit must fail for want of jurisdiction, in the Circuit Court; for in the absence of the alleged combination the claim of each defendant must, according to our decisions, be regarded *for purposes of jurisdiction as separate from the others.*" (Italics ours).

Justice McKenna concluded his opinion in the second appeal of the *McDaniel v. Traylor* Case (212 U. S. 428) by approving the finding of the trial court that the evidence failed to establish that the alleged *fraudulent combination* and *conspiracy* on the part of the defendants existed; hence the trial court was without jurisdiction to entertain the suit.

* * * * *

The next instance where reference is made to causes of action being "tied together" for the purpose of determining the jurisdiction of the United States District Court, is found in the case of *Woodmen of the World v. O'Neill*, decided in 1924, 266 U. S. 292. The opinion of the Supreme Court was by Mr. Justice Sanford. It sets out that—

"The bill alleged in substance that the defendants had entered into an agreement and *conspiracy* to embarrass and attempt to ruin the Society; that pursuant to this agreement and conspiracy, they endeavored at a meeting of the Head Camp of Texas to secure their election as delegates to a session of the Sovereign Camp at New York" * * * and that "pursuant to their joint agreement and *conspiracy*, they brought twenty-five separate ac-

> tions at law against the Society in a local court of Texas, to recover amounts ranging from $987 to $1,170; that there was no merit in the cause of action set up by the defendants, and the suits were wholly without any foundation; that if the Society were compelled to defend each of the separate suits, it would be subjected to an enormous expense,"

by reason of which the Society sought to have the defendants enjoined from prosecuting their separate suits in the State Court, or endeavoring to collect in any other manner, any sums of money from the Society, by reason of the facts alleged. The District Court granted a motion of the defendants to dismiss the Society's bill for want of jurisdiction, because, jurisdiction being based on diversity of citizenship, the requisite jurisdictional amount was not present, since each of the defendants claimed in his suit in the State court, an amount less than $3,000.00. The Supreme Court, in setting aside said order, holding that the District Court was without jurisdiction to entertain plaintiff's bill, after stating the general rule that—

> "In a suit based on diversity of citizenship, brought against several defendants, to enjoin the collection of claims against the plaintiffs, which are separate and distinct — *although depending for thir vaidity upon a common origin*—the test of jurisdiction is the amount of *each separate claim*, and not their aggregate amount." (Italics ours)

said:

> "An exception to this general rule was, however, recognized in McDaniel vs. Traylor, 196 U. S. 415,

427. There the heirs of one Hiram Evans, an intestate, brought suit in the Circuit Court against several defendants to enjoin the enforcement of claims that had been allowed as liens upon his real estate by orders of a probate court. Each claim was less than the requisite jurisdictional amount, but their aggregate exceeded that sum. The bill alleged that these claims were not debts of the intestate, but that the defendants had *conspired and confederated* with the administrator to secure their payment out of the estate, and that the orders allowing them had been procured as the result of the *conspiracy and the fraud* practiced in pursuance thereof. This court reversed a decree of the Circuit Court dismissing the bill on demurrer for want of jurisdiction, and held that, on the face of the bill, the value of the matter in dispute was 'the aggregate amount of the claims *fraudulently* procured by the defendants *acting in combination* to be allowed in the probate court as claims against the estate.' * * * The essence of the suit is the *alleged fraudulent combination and conspiracy* to fasten upon that estate a liability for debts of John Evans, which were held by the defendants, and which they, *acting in combination* procured in cooperation with James Evans to be allowed as claims against the estate of Hiram Evans. *By reason of that combination*, resulting in the allowance of all those claims in the probate court, as expenses of administering the estate of Hiram Evans, *the defendants have so tied their respective claims together* as to make them, so far as the plaintiffs and the relief sought by them are concerned one claim." (Italics ours).

The Supreme Court, in its opinion in the *Woodmen of the World v. O'Neill* Case, supra, after quoting, as

above set out, from its decision in the *McDaniel v. Traylor* Case, said:

> "We find that under the allegations of the present bill, the case comes fairly within *the reason of the exception* recognized in the McDaniel cases. It is not only alleged that the defendants' claims are without foundation, but that they originated and are being prosecuted in the State court, in pursuance of an *agreement and conspiracy* to embarrass and to attempt to ruin the Society. * * * *To conspire to prosecute*, by concert of action, numerous *baseless claims against the same person for the wrongful purpose* of harassing and ruining, *partakes of the nature of a fraudulent conspiracy;* and in a suit to enjoin them from being separately prosecuted, it must likewise be deemed to *tie together* such several claims as one claim for jurisdictional purposes, making the aggregate amount the value of the matter in controversy. We conclude therefore, that on the face of the bill, the District Court had jurisdiction of the suit by reason of the diversity of citizenship and the amount in controversy."

* * * * *

The following additional cases discuss the exception to the general rule, announced in *W.O.W. v. O'Neill*, 266 U. S. 292:

Di Giovanni v. Camden Fire Ins. Ass'n., 296 U. S. 64;

Pioneer Pyramid Life Ins. Co. v. Hughey, et al, (C.C.A. 4th) 76 Fed. (2d) 524;

Indemnity Insurance Co. of North America v. School Dist. No. 1, etc. (C.C.A. 6th) 63 Fed. (2d) 878;

Georgia Power Co. v. Hudson (C.C.A. 4th) 49 Fed. (2d) 66.

* * * * *

In each of the above mentioned cases will be found a discussion of the exception to the general rule announced in the O'Neill Case, and in each of said four cases mentioned, the court expressed the opinion that the exception to the general rule announced in the O'Neill Case, was limited to those cases where it was alleged and proved a fraudulent conspiracy existed, thus tying together the causes of action.

An examination of the Respondent's petition will immediately disclose that Respondent does not seek to establish jurisdiction in this suit against the 26 defendants herein, whose respective liabilities are limited, under the guaranty sued upon, to $1,500.00 principal and $1,000.00 interest, on the ground that said 26 defendants fraudulently conspired or formed a combination, against which plaintiff seeks to relieve itself. Such being true, it therefore must be conceded that jurisdiction in this suit cannot be justified by reason of the exception to the general rule hereinbefore mentioned, that where a fraudulent combination or conspiracy is charged against the defendants, the cause of action sued upon is "tied together" as a result of the joint fraud or conspiracy charged, and the aggregate of the several amounts sought to be recovered from all defendants may be aggregated for the purpose of determining jurisdiction.

* * * * *

Closely akin, and almost a corollary to the foregoing exception (where a fraudulent conspiracy is charged) to the general rule that the separate liabilities of a number of defendants may not be aggregated to establish the required jurisdictional amount to enable a District Court of the United States to entertain a suit founded upon diversity of citizenship, is the following one announced in *Wyman v. Bowman*, 127 Fed. 257, that:

Where there is a common and decisive point of litigation between the Complainant and several defendants, and Complainant has no remedy at law as prompt, practical and efficient to attain the ends of justice as the suit in equity, and the convenience of the Complainant in pursuing the single suit in equity is not overcome by the deeper inconvenience of such a course to the defendants, a court of equity will entertain jurisdiction in order to avoid a multiplicity of suits.

The Supreme Court of the United States in *Di Giovanni v. Camden Ins. Ass'n.*, 296 U. S. 64, made the following comment upon the "multiplicity of suits" exception, above mentioned:

> "Whether a suitor is entitled to equitable relief in the federal courts, *other jurisdictional requirements being satisfied*, is strictly not a question of jurisdiction in the sense of the power of a federal court to act. It is a question only of the merits; whether the case is one for the peculiar type of relief which a court of equity is competent to give." * * *
>
> "*But want of the jurisdictional amount in*

controversy which deprives a federal court of its authority to act at law is not ground for invoking its equity powers. The statute forbids resort to equity in the federal courts when they afford adequate legal relief. It does not purport to command that equitable relief shall be given in every case in which they fail to do so. Plainly it does not so command when the want of legal remedy is due to the express prohibition of Congress, applicable alike to suits at law and in equity. See Healy v. Ratta, 292 U. S. 263. * * *

"Avoidance of the burden of numerous suits at law between the same or different parties, where the issues are substantially the same, is a recognized ground for equitable relief in the federal courts. See Ogden City v. Armstrong, 168 U. S. 224; Hale v. Allison, 188 U. S. 56. But the award of this remedy, as to other forms of equitable relief, is not controlled by rigid rules rigidly adhered to regardless of the end to be attained and the consequences of granting the relief sought. It rests in the sound discretion of a court of equity and a theoretical inadequacy of the legal remedy may be outweighed by other considerations. * * *

"The bare fact that a plaintiff is threatened with two suits on the same document and having common issues has been held not to be enough to call for their trial in a single suit in equity. Druon v. Sullivan, 66 Vt. 609; 30 Atl. 98. There appears to be no case in this court where the relief has been granted in such a case and there are numerous cases where equitable considerations were thought to require denial of the relief even though more than two suits were involved. See Matthews v. Rodgers, supra, 529, 530, and cases cited. * * *

"The power reserved to the states under the Constitution to provide for the determination of controversies in their courts may be restricted only by the action of Congress in conformity to the judicial sections of the Constitution. Congress, by its legislation, has declared its policy that cases involving less than the jurisdictional amount be left exclusive to the state courts, except that a judgment of the highest court of the State adjudicating a federal right may be reviewed by this Court. See Healy v. Ratta, supra, 269, 270. *Courts of equity, in the exercise of their discretionary powers, should recognize this policy by scrupulous regard for the rightful independence of the state governments; and a remedy infringing that independence, which might otherwise be given, should be withheld if sought on slight or inconsequential grounds.* See Williams v. Pennsylvania, 294 U. S. 176, 185; Matthews v. Rodgers, supra, 575; cf. Central Kentucky Natural Gas Co. v. Railroad Commission of Kentucky, 290 U. S. 264, 271-273; Kennedy v. Tyler, 269 U. S. 13.

"We think the threatened injury to respondent is of too slight moment to justify a federal court of equity, in the exercise of its discretion, in according a remedy which would entail denial of a jury trial to the petitioners and withdraw from the jurisdiction of the state courts suits which could not otherwise be brought into the federal courts." (Italics ours).

In applying the "multiplicity of suits" exception to the facts of the case at bar, there are two reasons why Petitioners feel that such exception is not relevant or applicable:

FIRST REASON: Respondent's Complaint filed in the United States District Court (R. 1-10) predicates jurisdiction upon diversity of citizenship (Par. I, R. 2) and the fact that the matter in controversy exceeded $3,000.00, exclusive of interest and costs (Par. II, R. 2). Nowhere in Respondent's Bill of Complaint is the right asserted that the United States District Court should entertain jurisdiction in order to avoid a multiplicity of suits in the State Court. Respondent not having claimed or asserted that the District Court of the United States had jurisdiction to entertain this action, in order to avoid a multiplicity of suits, petitioners respectfully submit that such claim cannot now be made.

SECOND REASON: Even though Respondent's Bill of Complaint had claimed, as a jurisdictional ground, the avoidance of a multiplicity of suits in the State Court, such claim would not have been well-founded, because under numerous decisions of the Supreme Court of Texas, one suit growing out of the same transaction, can be brought against several defendants in order to avoid a multiplicity of suits. In other words, the same equitable rule of the avoidance of a multiplicity of suits prevails in the State Courts of Texas, as in the Federal Courts. The "multiplicity of suits" rule in Texas is well stated in *Texas Jurisprudence*, Vol. 32, pages 38-41, as follows:

> "It is the practice of our courts to join as defendants all who are supposed to be liable to the plaintiff, although their liability may have accrued in different ways. That they may have no identity of interest to be affected by the judgment

is no objection to such joinder, for, in courts of equity, persons having different and even opposite interests are often made defendants. This rule has its origin in considerations of justice and convenience, and has for its object the prevention of circuity of action and *the multiplicity of suits.* Where the plaintiff's demands against each and all of those made defendants *grew out of one transaction* and are so intimately connected as to render it proper to determine all of the demands in one suit, undoubtedly there is no misjoinder of parties or of causes. The mere fact that the suit is an involved or complicated one, is not an objection to joinder of defendants, when the difficulty arises from the nature of the transaction, rather than from the manner of suing. * * * The right of the plaintiff to join a person who is liable under a contract with one who is responsible in tort, has been frequently recognized in cases where the liabilities could be conveniently litigated together. * * * It is to be borne in mind that our courts, in order to avoid a multiplicity of suits, are liberal in permitting the joinder of parties, when no prejudice thereby is sustained."

The right of a plaintiff to join a number of defendants in a suit brought in a State Court of Texas, where the several liabilities grow out of the same transaction, is recognized in many decisions of the Supreme Court of Texas, but the following should suffice:

Floyd v. Patterson, 72 Texas 202;
Cobb v. Barber, 92 Texas 309;
Richardson v. Cage Co., 113 Texas 152;
Stockyards National Bank v. Maples, 127 Texas 633, 637, and

Campbell v. Land, 69 S. W. (2d) 554 (writ of error denied by Supreme Court of Texas).

Petitioners quote the following from the decision in the last mentioned case, *Campbell v. Land:*

> "The reason given in the pleading filed by J. J. Land and his sureties for their dismissal was that the cause of action against Campbell and his surety was ex contractu, while that alleged against themselves was ex delicto. This is a mistaken view. Both arose out of a contract relating to precisely the same debt. The evidence is essentially the same in both cases. But one debt is involved, and all equities between the parties can be adjusted in one suit, and we are of the opinion that the trial court erroneously declined to assume jurisdiction over the cause of action alleged by both the executrix and appellants against Land and his sureties. This conclusion is supported by many authorities."

Applying the foregoing "multiplicity of suits" rule, prevailing in the courts of Texas to the facts of the case at bar, it goes without saying that Respondent had, and now has, the right to maintain one suit in a District Court of Texas (the jursidiction of which is $500.00 or over) against all of the twenty-six Petitioners herein who signed the contract of guaranty sued upon. It is not necessary for Respondent to seek relief in a United States District Court, in order to avoid a multiplicity of suits, which it might otherwise be required to bring in the State Court of Texas, because, as stated, the same "multiplicity of suits" rule obtains in the courts of Texas as in the Federal Courts.

Petitioners again repeat the solemn admonition given by the Supreme Court of the United States in the *Di Giovanni v. Camden Insurance Company* case, 296 U. S. 64, as follows:

> "The power reserved to the states under the Constitution to provide for the determination of controversies in their courts may be restricted only by the action of Congress in conformity to the judicial sections of the Constitution. Congress, by its legislation, has declared its policy that cases involving less than the jurisdictional amount be left exclusive to the state courts, except that a judgment of the highest court of the State adjudicating a federal right may be reviewed by this Court. See Healy v. Ratta, supra, 269, 270. *Courts of equity, in the exercise of their discretionary powers, should recognize this policy by scrupulous regard for the rightful independence of the state governments; and a remedy infringing that independence, which might otherwise be given, should be withheld if sought on slight or inconsequential grounds.*"

* * * * *

A third exception to the general rule that the separate liabilities of a number of defendants may not be aggregated in determining and establishing the jurisdiction of a District Court of the United States, where the suit is founded upon diversity of citizenship, and the claim against each defendant does not meet the jurisdictional amount, is the following one:

Where a creditors's bill is brought in the District Court of the United States for the collection, administration and distribution, among all creditors of all

classes, of a trust fund, a District Court of the United States has jurisdiction, in such a suit filed against numerous defendants, although the amount sought to be recovered from each does not equal the required jurisdictional amount.

The opinion in the case of *Broderick v. American General Corporation*, 71 Fed. (2d) 864, contains an excellent discussion and analysis of the limited application of the exception mentioned. The suit was brought by Broderick, Superintendent of Banks of the State of New York, against stockholders, who resided in the State of Maryland, of a New York State Bank which had failed, to collect the total liability assessment made against them, pursuant to the law of New York, where the bank was incorporated. The bill was filed against sixty defendants, but against only six of them were judgments asked in excess of $3,000.00. Judge Parker, for the Fourth Circuit Court of Appeals, after pointing out that as to all of the defendants, save six, the recovery sought against each was not within the required jurisdictional amount, and that "the test of jurisdiction is the amount of each separate claim, and not the aggregate amount," proceeded to next discuss the question of whether, in such a situation, the bill asserted "equitable rights or asked equitable remedies which would give the court jurisdiction in equity, irrespective of the number of defendants." In discussing this question, Judge Parker, for the Fourth Circuit, said:

> "The bill certainly asserts no equitable right or title; and, in this, it is to be distinguished in the outset from creditors' bills such as in Alsop v.

Conway (188 F. 568) and Robertson v. Conway (188 F. 579) where the court was asked to *collect in and administer a trust fund* in which plaintiffs were interested. While there is an allegation in the bill that plaintiff acts as a fiduciary and trustee for creditors of the failed bank, *the court is not called upon to collect and administer a trust fund for their benefit.* Plaintiff merely asks recovery on a statutory liability; and any moneys collected by him under judgments which may be obtained, will be handled, *not under the direction of the court,* but pursuant to the provisions of the New York statute. The jurisdiction of the court to protect and administer *trust funds* then is not remotely involved." * * *

"The decree appealed from will therefore be reversed and the cause will be remanded with direction to the court below to dismiss the bill for lack of jurisdiction as to all defendants against whom a recovery not exceeding $3,000.00 is asked, etc."

* * * * *

Petitioners respectfully submit that jurisdiction in this suit cannot be sustained on the theory that it either is, or could be brought as a creditors' bill. As Respondent's petition now stands, it is brought solely and alone for the use and benefit of St. Louis Union Trust Company, which represents one group or class of creditors. It does not purport to be brought as a general creditors' bill in behalf of all creditors of the Young Men's Christian Association of Fort Worth, nor, indeed, is it even brought against the Young Men's Christian Association, but only certain defendants who signed a guaranty of an indebtedness cre-

ated by said Young Men's Christian Association. Moreover, Respondent's petition does not seek to have the court take charge of and administer the funds sought to be realized by such suit, but, on the contrary, asks only for the usual and customary judgment against a number of defendants who, it is alleged, promised and agreed to pay to plaintiff certain sums of money. It therefore is apparent that Respondent's petition, as filed, is not, and cannot be construed as a creditors' bill — hence jurisdiction cannot be maintained by reason of the second exception to the general rule above stated.

* * * * *

Furthermore, we submit that Respondent cannot, by amending its Bill, bring this case within the exception stated, because under the guaranty agreement attached to plaintiff's petition, plaintiff, St. Louis Union Trust Company, has the right to itself administer all recoveries that are had on the guaranty, distribute the net proceeds ratably, without any preference or priority of any kind, among the holders, present or future, of the principal or interest notes executed by the Young Men's Christian Association of Fort Worth. The express powers conferred by the guaranty agreement, attached to Respondent's petition, negative the conclusion that a court should take charge of and administer, as a trust fund, any recoveries had on the guaranty.

The same situation existed in the *Broderick v. American General Corporation* suit, 71 Fed. (2d) 864, above mentioned. Plaintiff, Broderick, brought said suit as a fiduciary and trustee for the creditors of a

failed bank, but the Circuit Court of Appeals for the Fourth Circuit refused to consider such a suit as a creditors' bill, because, as stated by the court in its opinion, "Plaintiff merely asks recovery on a statutory liability; and any moneys collected by him under judgments which may be obtained, will be handled, *not under the direction of the court*, but pursuant to the provisions of the New York statute. The jurisdiction of the court to protect and administer *trust funds* then is not remotely involved." (Italics ours).

* * * * *

APPLICATION OF THE GENERAL RULE TO THE FACTS INVOLVED.

Having demonstrated that jurisdiction, in this suit, cannot be maintained either (1) on the theory of "tying together" causes of action where a fraudulent conspiracy or combination of the defendants is charged or (2) on the theory of avoiding a multiplicity of suits or (3) upon the theory that a creditor's bill is brought to recover a trust fund to be administered by the court, the inquiry is narrowed down to one, and only one question, to-wit: Does the written guaranty attached to plaintiff's Bill impose upon the defendants a joint liability for an amount in excess of $3,000.00, exclusive of interest and costs.

If the liability of the several defendants, who signed the guaranty is a joint one, for an amount in excess of $3,000.00, exclusive of interest and costs, then Petitioners concede that the District Court has jurisdiction; but if, on the other hand, the guaranty does not

impose upon the defendants a joint liability in excess of $3,000.00, exclusive of interest and costs, then Petitioners respectfully submit the District Court was without jurisdiction to entertain this suit. What, then, is the meaning, effect and scope of the guaranty agreement upon which the liability of the several defendants is predicated?

Unless the guaranty agreement sued upon is subject to the construction that the signers bound themselves jointly and severally to the payment of $1,500.00 in principal, and $1,000.00 in interest (which construction will be later discussed) it is apparent that said guaranty agreement contains two inconsistent and irreconcilable provisions, viz:

The First: A provision under which "said undersigned guarantors, for themselves, their heirs, executors and administrators, do hereby jointly and severally guarantee unconditionally unto the St. Louis Union Trust Company * * * the payment of all and singular the sums due and to become due on each and all of said notes above described, both principal and interest, according to their respective tenor, purport and effect.

The Second: A provision whereby "No signer of this guaranty shall be liable for a greater amount of principal, or of interest, than the amounts respectively set opposite his signature, together with eight per cent (8%) interest per annum on so much thereof as he shall not pay when due."

In each case, as shown by the guaranty attached to plaintiff's Bill, the liability of each guarantor was

expressly limited to $1,500.00 of principal and $1,-000.00 of interest. (See preceding page 4).

By what process of reasoning can it be said that, in the face of this express limitation of liability to $1,-500.00 principal and $1,000.00 interest, nevertheless, the several guarantors were jointly liable for the entire $100,000.00 principal amount and $34,080.00 interest? The question answers itself. The only construction that can be given to the guaranty is that which limits the liability of each of the guarantors to the payment of $1,500.00 principal and $1,000.00 interest. Under this construction, the signers of the guaranty could be held jointly and severally liable for $1,500.00 principal and $1,000.00 interest, but for no more. For instance, if the indebtedness was paid down to $1,500.00 principal and $1,000.00 interest, then all signers would be jointly and severally liable for said sums: $1,500.00 principal and $1,000.00 interest, but this would not be sufficient to confer jurisdiction upon the District Court to entertain a suit to collect such amounts. Why then, would the District have jurisdiction to entertain this suit to establish 26 liabilities against 26 defendants, no one of which would be liable for more than $1,500.00 principal and $1,000.00 interest? It seems obvious that the District Court would not have jurisdiction of such a suit, for even concede that the liability of the 26 defendants is *joint*, it is only joint to the extent of $1,500.00 principal and $1,000.00 interest.

Plaintiff, in its Bill of Complaint, does not seek a joint recovery against defendants, for the entire amount of the balance of principal due ($73,500.00),

but only for $39,000.00 of the principal amount. It is therefore apparent that plaintiff has arrived at the $39,000.00 total liability of the 26 defendants by multiplying $1,500.00 (the limit of each defendant for principal) by 26 (the number of defendants), the total being $39,000.00. It would therefore seem that plaintiff has construed the contract of guaranty, not as imposing a joint liability upon defendants for the entire principal balance ($73,500.00), but as imposing upon the 26 defendants only a principal liability of $1,500.00 each, or a total of $39,000.00. This construction, in our judgment, is the only reasonable and logical one that can be adopted, because the guaranty agreement is so explicit, with respect to limiting the liability of each of the guarantors to $1,500.00 of principal and $1,000.00 of interest, and it would do violence to this expressed intention to enlarge the liability of the defendants so as to make them jointly responsible and liable for the entire amount of the original $100,000.00 principal and $34,080.00 interest.

If it is therefore conceded or assumed that the proper construction of the guaranty is that the guarantors limited their liability to $1,500.00 of principal and $1,000.00 of interest, then the other provision of the guaranty agreement under and by which the guarantors jointly and severally bind themselves to pay the entire principal indebtedness of $100,000.00, and interest indebtedness of $34,080.00 is meaningless and must be ignored, because, as previously stated, the two provisions with respect to the liability of the guarantors cannot exist under the same instrument at one and the same time.

Petitioners direct attention to the case of *Thorpe v. Story*, 73 Pac. (2d) 1194, which involved a guaranty very similar to the one in this case. The facts in the *Thorpe v. Story* case were substantially these: An action was brought by the members of a Bondholders' Protective Committee against eleven guarantors, to recover upon a written guaranty of a $350,000.00 bond issue of the Annadale Corporation, which guaranty recited that in consideration of the issuance and sale of $350,000.00 of First Mortgage 6½% Bonds of the Annadale Corporation, the guarantors, in consideration of the benefit derived by them as stockholders of said corporation, and to facilitate the sale of said bonds, and to protect the purchasers thereof, unconditionally guaranteed to the holders and purchasers of said bonds, from time to time, the punctual payment of both principal and interest thereon, at the time and place, and in the manner specified in said bonds, and the interest coupons thereto annexed. After reciting the foregoing obligation on the part of the guarantors, the guaranty continued:

> "It is provided however, as a condition hereof, that the obligation and liability of each of the undersigned hereunder, shall be limited in amount to the fraction of the total amount of principal and interest of said bonds set after his respective name, as follows * * *, and that each of the undersigned shall be liable hereunder in an amount equal to, but not in excess of, the respective aforesaid fractional amount of the entire principal and interest of said bonds. This guaranty is a continuing guaranty, and shall not be exhausted by one or more recoveries thereon, but shall bind us in the above proportions until payment has

been made in full of the principal and interest of said bonds. The holder of any bond may, from time to time, bring suit upon this guaranty, either by himself as plaintiff, or as plaintiff in conjunction with the holder of other bonds, and in any such suit, may join all, or any part of us as defendants."

The guaranty was signed by seventeen individuals, and their liability was in each case limited to a stated fraction of the entire amount of $350,000.00 bonds issued, and the interest accruing thereon. Default was subsequently made in the payment of the $350,000.00 bonded indebtedness, and the Trustee, in response to notice of default and demand, accelerated the outstanding bonds, making them immediately due and payable. Meanwhile, the owners of the bonds had organized a Protective Committee and a number of them had deposited their bonds in trust, under the terms of a Bondholders' Protective Agreement. The suit was filed by the members of the Bondholders' Protective Committee, to recover upon the guaranty as to the deposited, outstanding bonds in the aggregate principal sum of $216,000.00.

The defendants, who were the guarantors, contended that under the language of the guaranty sued upon, there existed a seveal liability, upon the part of each guarantor, for the guarantor's respective fractional proportion of the unpaid principal and interest upon the bonds sued upon, in which case plaintiffs would be entitled to a several judgment against each of the guarantors. Plaintiffs' contention, as stated in the court's opinion, was:

"Plaintiff's theory is that the guaranty consisted of two separate and distinct parts, the first and fundamental part being a joint and several guaranty of the entire obligation, both principal and interest, and the second part being the limitation in amount of liability of each of the guarantors; that, therefore, upon retirement of any bond, there would come into operation the 'joint' feature which would permit collection from each guarantor of an amount equal to his fraction of liability upon the retired bond, which amount could be applied to make up any deficit caused by other guarantors' inability to pay."

The Supreme Court of California, in construing the guaranty, said:

"The guaranty, in our view, imposes only a several liability, regardless of which method is used to compute it, and in reality, the judgment for which plaintiffs are asking is simply a several judgment against each defendant guarantor for his fraction of the entire indebtedness without deduction for retired bonds. But we find no warrant under the terms of the guaranty for holding any guarantor liable for more than his proportion of the unpaid indebtedness. Plaintiffs' argument seems strained, but it does not support any reasonable interpretation of the guaranty. The actual wording of the instrument, and its only clear and reasonable purport, imposes a several liability against the guarantors limited to fractional proportions of the outstanding unpaid indebtedness. The trial court used the proper method in computing the respective amounts awarded by the judgment, and properly denied plaintiffs' motion for an order vacating judgment and for the entry of another and different judgment."

Petitioners submit that the conclusion reached by the Supreme Court of California in the Thorpe Case, that the guaranty there involved, created a several, and not a joint liability, on the part of the guarantors, lends great weight and support to the contention made by the guarantors in the case now before this court, that their respective liability is a several one, limited to the payment of $1,500.00 principal and $1,000.00 interest, and, under no circumstances, can one guarantor be required to pay or contribute to the liability of another guarantor, for having once discharged his own limited liability by the payment of $1,500.00 principal and $1,000.00 interest, he could not be held responsible or liable for the failure of other guarantors to pay and discharge the respective amounts due and owing by them.

On the other hand, if the liability is a joint one then, at most, it is limited to the payment of $1,500.00 principal and $1,000.00 interest, which is not within the jurisdiction of the District Court.

* * * * *

Great stress was laid by Respondent in the Circuit Court of Appeals (pages 8-12) upon the case of *Miller v. Bush*, 24 S. W. (2d) 23, by the Commission of Appeals of Texas, wherein the court held that, *based upon the particular facts in that case*, the contract of guaranty sued upon created a joint and several obligation; hence pleas of privilege were not sustainable.

Respondent, in its brief in the Circuit Court, stated that the contract of guaranty in the *Miller v. Bush* case, is "practically identical" with the contract of guaranty in this case.

Although Petitioners do not agree that Respondent's statement is correct, nevertheless, for the sake of argument, they will assume that it is. What then is the result? All that we would then have in this case would be a joint liability of the twenty-six defendants (Petitioners herein) for the payment of $1,500.00 principal and $1,000.00 interest, which joint liability certainly would not be within the required jurisdictional amount (in excess of $3,000.00 exclusive of interest and costs), of a United States District Court.

This, in itself, should be a sufficient answer to the Respondent's contention that this case is controlled by the decision of *Miller v. Bush*, 24 S. W. (2d) 23, by the Commission of Appeals of Texas; for, as stated above, even if it be conceded that the guaranty sued upon in this case, created a joint liability on the part of the guarantors, still such joint liability does not meet the jurisdictional requirements of a United States District Court, because such joint liability is expressly limited to the payment of $1,500.00 in principal and $1,000.00 in interest, and concededly, a joint liability on the part of twenty-six guarantors to pay $1,500.00 of principal, would not be sufficient to confer jurisdiction upon a District Court of the United States, where diversity of citizenship is relied upon as a ground of jurisdiction.

However, Petitioners do not agree that the guaranty relied upon in this case is the same as in the *Miller v. Bush* Case, supra. Admittedly few cases, founded upon a contract of guaranty, present the same facts; each case must be decided upon its own merits.

Who can say with certainty that the Commission of Appeals of Texas, in the event the contract of guaranty involved in this case, was before that court, would hold that it created a joint liability? The language of the two guaranties is not the same; furthermore, in the *Miller v. Bush* Case, the Commission of Appeals of Texas was passing upon a *venue, not a jurisdictional question.* Let us therefore, examine and compare the language of the guaranty in the *Miller v. Bush* Case, with the guaranty in the case now before this Court.

The controlling provisions of the guaranty in the *Miller v. Bush* case, were as follows:

> "*We, and each of us,* agree to reimburse such Directors, or either of them, to the extent of the payment so made by them, or either of them, *our prorata part* of such amount so paid out by said Directors. It is understood and agreed, however, that none of us shall in any event be liable in a greater sum than the amount set opposite our names, being one-half the amount at par value of the stock now owned by us."

The guaranty agreement in the *Miller v. Bush* case was signed as follows:

"J. B. Earl ..... 10 Shares
T. J. Bush ..... 45 Shares
C. R. Miller ..... 500 Shares
G. H. Miller ..... 130 Shares
etc."

The controlling provisions in the guaranty agreement in the case now before this court, are:

> "Said undersigned Guarantors, for themselves, their heirs, executors and administrators do here-

by jointly and severally, guarantee unconditionally unto the St. Louis Union Trust Company, a Missouri corporation of St. Louis, Missouri, as trustee of an express trust, for the use and benefit of the holder or holders from time to time of the respective notes hereinbefore described, its successors and assigns, the payment of all and singular the sums due and to become due on each and all of the said notes above described, both principal and interest, according to their respective tenor, purport and effect: Provided, however, that no signer of this guaranty shall be liable for a greater amount than the amounts respectively, set opposite his signature, together with eight per cent (8%) interest per annum on so much thereof as he shall not pay when due." (R. 7-8) * * *

"In Witness Whereof, said undersigned have hereunto and to a duplicate copy hereof set their hands, and have subscribed against their respective signatures the *several amounts of their respective guaranties for principal and interest aforesaid.*

Signed in the presence of	Name of Guarantors	Respective Amounts of Interest Guaranteed	Respective Amounts of Principal Guaranteed
R. E. Squires	R. O. Dulaney	$1000.00	$1500.00
R. E. Squires	W. T. Ladd	1000.00	1500.00
R. E. Squires	C. P. Schenk	1000.00	1500.00
R. E. Squires	Wm. J. Baker	1000.00	1500.00"

etc. (R. 10)

The Commission of Appeals in the *Miller v. Bush* case, held that a *joint*, as well as several, obligation was created by the contract of guaranty in that case:

1. Because the words "*we, and each of us,*" as used in the contract of guaranty, imported a

joint undertaking or obligation on the part of the guarantors.

2. Because the words "*our pro rata part*" of the indemnity sum, imported a joint, as well as several obligation.

3. Because "regardless of the particular words employed, where a binding agreement of a number of parties with one another is to the effect that each will bear his proportionate part of a burden resting on the shoulders of one or more of them, a joint and several obligation, as between themselves, necessarily arises."

A careful reading of the controlling provisions in the contract of guaranty in this case, will immediately disclose that the contract of guaranty in this case is not the same as the contract of guaranty in the *Miller v. Bush* case.

It is elementary that a contract, like a will, must be construed from its four corners, so as to arrive at the true intention of the contracting parties. If this rule be followed, what force and effect should, and must, be given to the concluding paragraph in the contract of guaranty in this case, reading:

"In Witness Whereof, said undersigned have hereunto and to a duplicate copy hereof, set their hands, and have subscribed against their respective signatures *the several amounts of their respective guaranties for principal and interest aforesaid.*

Signed in the presence of	Name of Guarantors	Respective Amounts of Interest Guaranteed	Respective Amounts of Principal Guaranteed
R. E. Squires	R. O. Dulaney	$1000.00	$1500.00
R. E. Squires	W. T. Ladd	1000.00	1500.00
R. E. Squires	C. P. Schenk	1000.00	1500.00
R. E. Squires	Wm. J. Baker	1000.00	1500.00"

If we apply the rule of "common sense," in construing the contract of guaranty now before this court, it must be concluded that—

1. Petitioners herein, as guarantors, did not jointly guarantee the payment of the twenty-six promissory notes, aggregating, in the principal amount, $100,000.00, executed by the Young Men's Christian Association of Fort Worth; nor did

2. Petitioners herein, as guarantors, did not jointly guarantee the payment of $39,000.00 principal and $7350.00 interest on said notes, which appellant sues for, but,

3. On the contrary, each of appellees specifically guaranteed $1500.00 of principal and $1000.00 of interest on the indebtedness created by the Young Men's Christian Association.

By what process of reasoning can it be said that in the face of an express limitation of liability to pay $1500.00 principal and $1000.00 interest, nevertheless, the several guarantors, appellees herein, were jointly liable for either the entire $100,000.00 principal amount, and interest, represented by the notes executed by the Young Men's Christian Association of Fort Worth, or $39,000.00 in principal and $7350.00 in interest, sued for by appellant? The question answers itself!

The only construction that can be given to the guaranty is that which limits the liability of each of the guarantors to the payment of $1500.00 principal and $1000.00 interest. As and when each guarantor discharges this limited liability, he thereupon ceases to be liable for any further amount.

It is true, as hereinbefore pointed out, that the guaranty very properly may be construed as a *joint one* for the payment of $1,500.00 principal and $1,000,00 interest, but this would not result in conferring jurisdiction upon the District Court to hear and determine this case upon its merits; for, in order to confer jurisdiction upon the District Court there must be a joint *liability* of the defendants to pay to plaintiff more than $3,000.00 exclusive of interest and costs.

The *Miller v. Bush* Case, 24 S. W. (2d) 23, involved venue, not jurisdiction, and, in trying to apply its holding to this case, it should not be stretched to undue length.

* * * * *

In analyzing the reasons (R. 35-36) adopted by the Circuit Court of Appeals for its holding that the United States District Court had jurisdiction to entertain this suit (2nd par., R. 3, and 1st par., R. 4) one is immediately impressed with the fact that the Circuit Court apparently has not relied upon any of the hereinbefore mentioned exceptions to the general rule that the liabilities of several defendants may not be aggregated or tied together in order to meet the required jurisdictional amount of the United States

District Court; but, on the contrary, assigned the following as its reasons for the sustaining of jurisdiction of the United States District Court to entertain this suit:

> "Whether suing one or all of the guarantors, the plaintiff had to allege and prove the amount due under the default, which, according to the petition was a total of $80,500.00 principal and interest. The court likewise was compelled to adjudicate this issue, and to that extent and in that sense, the amount in controversy far exceeded its minimum jurisdiction." (R. 35). See Miller v. Bush (Texas), 24 S. W. (2d) 23; Delaware County National Bank v. King, 95 N. Y. S. 956.
>
> "Notwithstanding the limitation of maximum liability as to all defendants, to $2,500.00 each, by the very terms of the guaranty, they bound themselves to that extent, jointly and severally, to pay all of the principal and interest of the note so guaranteed. * * *
>
> "The plaintiff, to the maximum extent of their liability, could recover against one or all at its option, but in so doing, it would again have to allege, prove and have adjudicated as a condition precedent to recovery, the amount of default by the principal debtor." (R. 35).
>
> "There was a single contract of guaranty which all of the defendants signed and became parties to, in which they all promise the same thing to the guarantee, and as to him that obligation was indivisible, except as to the limitation upon his right to recover payment by any one of them of not more than $2,500.00. The subject matter of

> the suit was this contract. The whole amount due thereunder, as well as the extent of liability of each defendant, had to be determined by the lower court, and, having jurisdiction in view of the amount involved in the principal demand, it could and should decide all the other issues." * * * (R. 36).

It will be observed, in reading the opinion of the Circuit Court of Appeals, as above set out (R. 35-36), that no decision of the Supreme Court of the United States is cited by the Circuit Court as authority for the unprecedented doctrine announced by it that "the amount involved in the principal demand" (R. 36) and "the amount due under the default, which according to the petition was a total of $80,500.00 principal and interest" (R. 35) constituted the governing factors in determining the jurisdiction of the District Court to entertain this suit, notwithstanding that Respondent, in its Bill of Complaint, did not sue the principal obligor, Young Men's Christian Association, nor did it sue to recover the amount in default, $73,500.00 in principal and $7,350.00 in interest, or a total of $80,850.00, but, on the contrary, sued to recover judgment against the twenty-six defendants (Petitioners herein) "jointly and severally for the sum of $39,000.00 and for the sum of $7,350.00 interest, which interest plaintiff prays be prorated among the defendants according to the terms of said contract of guaranty." (R. 5).

It is an elementary principle of law that where an exhibit is attached to a pleading, and there is a conflict between the two, the exhibit will control (see Department of Justice headnote to case of American

Surety Company of New York v. Federal Reserve Bank of Kansas City, decided by the United States District Court for the Western District of Missouri, October 12, 1939; 29 Fed. Supp. 940):

We do not feel that the situation warrants any extended argument on our part to convince the court that the defendants in this suit are not, and cannot be made, jointly liable for the $39,000.00 principal amount claimed by plaintiff in its Bill, for, as stated, the guaranty agreement attached as an exhibit to plaintiff's Bill clearly and unmistakably establishes that the liability of each of the defendants in this case is expressly limited to the payment of $1,500.00 principal and $1,000.00 interest. The allegations contained in plaintiff's Bill, claiming and seeking to establish a joint liability against the defendants for $39,000.00 principal, must therefore be disregarded, because such claim is inconsistent and in conflict with, and contrary to the express provisions of the guaranty agreement, which, as stated, is attached to plaintiff's Bill as an exhibit.

This court will therefore construe Respondent's Bill of Complaint, to which the guaranty sued upon is attached, as an action for the recovery from each of the twenty-six defendants of $1,500.00 in principal, and 1/26th of the $7,350.00 interest alleged to be due. In this situation, can it be successfully maintained that the United States District Court has jurisdiction of this suit, merely because the amount due under the default by the principal debtor was $73,500.00 principal and $7,350.00 interest, and because it was necessary for the court to adjudicate this issue,

precedent to any recovery, notwithstanding, as above stated, the guaranty sued upon and attached as an exhibit to Respondent's Bill of Complaint, clearly and unequivocally confined and limited the amount of each guarantor to the payment of $1,500.00 principal and $1,000.00 interest (R. 8, last sentence first par., R. 10). Petitioners ask the indulgence of the court to repeat the following provisions taken from the guaranty agreement sued upon:

> "Provided, however, that no signer of this guaranty shall be liable for a greater amount of principal or of interest than the *amounts respectively set opposite his signature*, together with eight per cent (8%) interest per annum on so much thereof as should not be paid when due." * * * (R. 8).
>
> "In Witness Whereof, said undersigned have hereunto and to a duplicate copy hereof, set their hands, and have subscribed against their respective signatures the *several amounts of their respective guaranties for principal and interest aforesaid.*

Signed in the presence of	Name of Guarantors	Respective Amounts of Interest Guaranteed	Respective Amounts of Principal Guaranteed
R. E. Squires	R. O. Dulaney.....	$1000	$1500.00"

(Here follows like guarantees by twenty-five other guarantors. R. 10).

Petitioners submit that the above mentioned reasons, assigned by the Circuit Court of Appeals for the sustaining of jurisdiction of the United States District Court to entertain this suit, are not only un-

supported by, but run counter to, and are in conflict with the decisions of this court in the following cases:

Ex Parte Phoenix Insurance Company, 117 U. S. 367;
Wheeler v. Cloyd, 134 U. S. 537;
Wheless v. St. Louis, 180 U. S. 379, 382.

In the first case mentioned, *Ex Parte Phoenix Insurance Company*, 117 U. S. 367, suit was brought on a single instrument, by which it was adjudged an agent of several insurance companies named bound them severally, each for its proportionate share of one-fourth to insure the property of Mrs. Helen M. Fitton for $12,000.00, and decree was rendered against each Company separately for $3,433.50. The trial court rendering the judgment denied the defendants the right of appeal, because the recovery against each of the defendants was less than $5,000.-00, the jurisdictional amount then required to appeal, and this court, in sustaining the trial court's action, held that the fact that suit was brought on a single insurance policy for $12,000.00, which provided for its apportionment among four companies, could not be availed of as a ground for justifying appellate jurisdiction. If the reasoning adopted by the Circuit Court of Appeals in the case at bar had been followed by this court in Ex Parte Phoenix Insurance Company, supra, an appeal would have been allowed on the ground that the $5,000.00 jurisdictional amount required for appeal, should be determined, not by the amount of the judgment sought and recovered against each defendant, but by the fact, as stated in the opinion of the Circuit Court, that, in order to recover, it

was necessary to "allege, prove, and have adjudicated as a condition precedent to recovery, the amount of default" by all debtors, before there could be an apportionment between them, or, as expressed again by the Circuit Court "the subject matter of the suit was this contract. The whole amount due thereunder, as well as the extent of liability of each defendant, had to be determined by the lower court, and having jurisdiction, in view of the amount involved in the principal demand, it could and should decide all the other issues." However, this court, in *Ex Parte Phoenix Insurance Company*, supra, in principle, declined to follow this reasoning, holding that the $5,000.00 jurisdictional amount required, was determined not by the amount of the principal demand, before apportionment among the several defendants, but by the amount of the respective judgments sought to be, and actually recovered against the several defendants, no one of which alone came within the required $5,000.00 jurisdictional amount.

In the second case above mentioned, *Wheeler v. Cloyd*, 134 U. S. 537, this court sustained a motion to dismiss the appeal, because the liability of no one of the defendants exceeded $5,000.00 (the jurisdictional amount then required for appeal), on the ground that their combined or aggregate liabilities could not be resorted to to sustain the right of appeal; this court, in its opinion, saying:

> "It is clear that the appeal must be dismissed. The decree from which it is taken was not a joint decree, as is readily observed by a mere inspection of it. The liability of each one of the defendants

under that decree can be neither increased nor diminished by any action on the part of any of his co-defendants. The right of every one of the defendants to appeal from the decree is separate and distinct from that of the other defendants. The amount adjudged against any one of them, in order that he might redeem his respective tract or tracts of land, does not in any case reach the amount necessary to give us jurisdiction to entertain the appeal. In no case is it $5,000.00."

In the third case, *Wheless v. St. Louis*, 180 U. S. 379, this court, in an opinion by Chief Justice Fuller, defined "amount in controversy," equivalent to the "amount in dispute" as follows:

> "The 'matter in dispute' within the meaning of the statute is not the principle involved, but the pecuniary consequence to the individual party, dependent on the litigation, as, for instance, in this suit the amount of the assessment levied, or which may be levied, *as against each of the complainants separately*. The rules of law which might subject complainants to or relieve them from assessment would be applicable alike to all, but each would be so subjected, or relieved, in a certain sum, and not in the whole amount of the assessment. If a decision on the merits were adverse to the assessment, each of the complainants would be relieved from payment of less than two thousand dollars. If the assessment were sustained, neither of them would be compelled to pay so much as that." (Italics ours).

Petitioners also call attention to the case of *Vance v. Vandercook Co.*, 170 U. S. 438, and particularly to paragraph on page 472, reading as follows:

> "In determining from the face of a pleading whether the amount really in dispute is sufficient to confer jurisdiction upon a court of the United States, it is settled that if from the nature of the case as stated in the pleadings there could not legally be a judgment for an amount necessary to the jurisdiction, jurisdiction cannot attach even though the damages be laid in the declaration at a larger sum. Barry v. Edmunds, 116 U. S. 550, 560; Wilson v. Daniel, 3 Dall. 401, 407."

Petitioners also call attention to the very useful work of *Williams on Jurisdiction and Practice of Federal Courts*, Section 13, page 95, wherein the author says:

> "Generally speaking, then, in an action at law for the recovery of a money judgment, the amount in controversy is the amount of money sought in good faith to be recovered by an integral plaintiff against an integral defendant."

Petitioners submit that if the above mentioned and well recognized principles for determining the "amount in controversy" are applied to the case at bar, this court will readily conclude that the Circuit Court of Appeals has seriously erred in predicating and sustaining jurisdiction upon "the amount due under the default" or "the amount of default by the principal debtor," or "the amount involved in the principal demand" (all three terms being used in the court's opinion), because, as clearly stated by this Court in *Wheless v. St. Louis*, "The 'amount in dispute' within the meaning of the statute, is not the principle involved, but the pecuniary consequences to the individual party, dependent on the litigation." What,

then, is the pecuniary consequence to the individual party defendants in this case? Concededly, it is and will be a judgment requiring each to pay $1,500.00 in principal and $1,000.00 in interest; the respective amounts guaranteed by each of the parties signing the guaranty sued upon, and no more.

In the *Wheless v. St. Louis* Case, supra, this court said:

> "If a decision on the merits were adverse to the assessment, each of the complainants would be relieved from payment of less than $2,000.00. If the assessment were sustained, neither of them would be compelled to pay so much as that." (280 U. S. at p. 382).

When the rule just announced is applied to the case at bar, the result may be thus stated: If a decision on the merits is adverse to Respondent, each of the Petitioners will be relieved from the payment of less than $3,000.00 (in fact, the maximum liability of each is limited to the payment of $1,500.00 in principal and $1,000.00 in interest). If Respondent is successful in this suit, none of the defendants will be compelled to pay as much as $3,000.00 (the liability of each being expressly limited in the guaranty agreement to the payment of $1,500.00 in principal and $1,000.00 in interest).

Petitioners feel that the reasons assigned by the Circuit Court of Appeals, as set forth in its opinion in this case, for determining the "amount in controversy," as used in Section 41, Title 28, U. S. Code Annotated, are so inconsistent with and foreign to those previously announced by this court, that no

further argument is necessary to establish Petitioners' contention that the Circuit Court of Appeals has erroneously decided an important jurisdictional question contrary to the long established decisions of this court.

CONCLUSION

Petitioners submit that the policy of the Federal Government, as reflected both in Legislative Acts and judicial construction, has been to curtail and discourage Federal Courts' concerning themselves with controversies that do not present a Federal question. This attitude is clearly reflected in the admonition given by this court in the *Di Giovanni Case*, 296 U. S. 64, that—

> "Congress, by its legislation, has declared its policy that cases involving less than the jurisdictional amount be left exclusively to the State courts. * * * Courts of equity, in the exercise of their discretionary powers, should recognize this policy by scrupulous regard for the rightful independence of the State Governments, and a remedy infringing that independence, which might otherwise be given, should be withheld, if sought on slight or inconsequential grounds."

Counsel for Petitioners submits that the decision of the Circuit Court of Appeals in the case at bar is out of harmony with the prevailing legislative and judicial policy of the National Government to leave to the State Courts the determination of controversies that do not clearly come within the express provisions of the Judicial Code, and since the adoption of the New Federal Rules of Civil Procedure, abolishing the distinctions

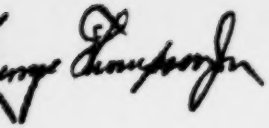
previously existing between courts at law and courts in equity, the Federal Courts should follow a policy of "scrupulous regard for the rightful independence of the State Governments and a remedy infringing that independence which might otherwise be given, should be withheld if sought on slight or inconsequential grounds" (substantially the doctrine announced in the Di Giovanni Case).

As hereinbefore pointed out, under the settled rules and practice and decisions of the Texas Courts, Respondent can bring one suit in a District Court of Texas against all of the twenty-six guarantors who signed the guaranty agreement sued upon in this action. The District Court of Texas will have jurisdiction of such suit, because the minimum jurisdictional requirement for a suit in such court is $500.00. (Article 1906, Revised Civil Statutes of Texas). The liabilities of each of the twenty-six guarantors, Petitioners herein, can be determined in such a suit, and Respondent as plaintiff in such action, will enjoy the same rights to judgment and the collection of same, as it would have in the Federal Courts. Such being the case, Petitioners submit that the resort of Respondent to a United States District Court to enforce against each of the twenty-six defendants, Petitioners herein, a liability limited as to each defendant, to $1,500.00 in principal and $1,000.00 in interest, comes within the ban laid down in the opinion of this Court in the *Di Giovanni Case*, 296 U. S. 64.

It is therefore respectfully submitted that this case is one calling for the exercise by this Court of its super-

visory powers, that the Petition for Writ of Certiorari should be granted, and upon final hearing, the decree of the Circuit Court of Appeals should be reversed.

Respectfully submitted,



GEORGE THOMPSON, JR.,
Attorney,
800 Fort Worth Club Building,
Fort Worth, Texas.